IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

RSA.No. 230 of 2007(B)

AS.138/2002 of ADDL.SUB COURT, IRINJALAKUDA
OS.1847/2000 of PRL.M.C.,IRINJALAKUDA

.....

APPELLANT/APPELLANT NO.2 IN AS/PLNTF.NO.2 IN OS:

T.S. PADMAVATHY,
D/O. THOTTUNGAVALAPPIL SUBRAMANIAN CHETTIAR,
W/O. M.S.BALAN, AGED 53 YEARS, HOUSE WIFE,
KIZHAKKEPRAM DESOM, KOTTULLI VILLAGE,PARUR TALUK,
NOW RESIDING AT CHANDRA VILASATHU PARAMBU,
KIZHAKKEPURAM NORTH PARAVUR.

BY ADV. SRI.N.UNNIKRISHNAN

RESPONDENTS/RSPDTS.NO.1 TO 5 IN AS/APLNTS.1&3 IN AS/DFNDTS IN OS./PLNTF.1&3 IN OS

---

1. SIVARAMAN,
S/O. THOTTUNGAVALAPPIL SUBRAMANIA CHETTIAR,
ITHUPPADAM DESOM, VELLIKULANGARA VILLAGE,
MUKUNDAPURAM TALUK.

2. T.S. GANESAN, S/O. -DO- -DO-.

3. T.S. RADHAKRISHNAN, S/O. -DO-,
RESIDING AT CHETTIPPARAMBU, MANAVALASSERY VILLAGE.

4. T.S. PARAMESWARAN, S/O. -DO- -DO-.

5. LEELA, W/O.NEELAKANDACHETTIAR,
AMBALAPARAMBIL, RESIDING AT PANDIKUDY, KOCHI.

6. KUMARI,
D/O. THOTTUNGAVALAPPIL SUBRAMANIAN,
MANAVALASSERY VILLAGE, W/O.CHATHULLIL HARIHARAN,
PONNURUNTHY DESOM, KOCHI VILLAGE,KANAYANNUR TALUK.

7. RAJALAKSHMY, D/O. SUBRAMANIAN, -DO- -DO-

BY ADV. SMT.T.S.MAYA (THIYADIL) (FOR R1TO R5)
SMT.K.REENA (FOR R1 TO R5)

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 22/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

.....

R.S.A. No. 230 OF 2007

.....

DATED THIS THE 22nd DAY OF MARCH, 2007

JUDGMENT

Second plaintiff in OS No.1847/2000 on the file of the Principal Munsiff Court, Irinjalakuda is the appellant. Respondents 1 to 5 are defendants and respondents 6 and 7 are plaintiffs 1 and 3. The suit was filed for partition of 38 3/4 cents in Survey nos.802/9 and 802/11 of Manavalassery Village of Mukundapuram Taluk . The title of the plaint schedule property admittedly stood in the name of Rugmini Ammal, under Ext.B1 sale deed whereunder the property was sold to Rugmini Ammal for a consideration of Rs.4,000/- on 25.6.1962. Subramanian Chettiyar is the husband of Rugmini Ammal. Plaintiffs 1 to 3 and defendants 1 to 5 are their children. Subramanian Chettiyar admittedly died in 1982 and Rugmini Ammal died in 2000. Subramanian Chettiyar, was employed in police and he was admittedly, living with Rugmini Ammal and their children in the police quarters till 1962. The case of plaintiff was that though Ext.B1 stands in the name of Rugmini Ammal, the property was purchased by the father Subramanian Chettiyar benami in the

name of his wife. What was contended by the plaintiff in the plaint was that as the father was in police department, for the purchase of property permission from the department should be taken and source of income is to disclosed and to avoid that, document was taken in the name of his wife and therefore the property belonged to Subramanian Chettiyar and on his death it devolved on Rugmini Ammal and all the children and on the death of Rugmini Ammal her right devolved on plaintiff and defendant and each of them are entitled to equal share. It was contended by defendants 1 to 5 that they got the property as per Exts. B2 to B4 settlement deeds executed by Rugmini Ammal. According to plaintiff those documents are void ab initio on the ground that she has no title to the property and she has no mental capacity to execute gift deeds and she was illiterate and therefore the properties are to be divided equally among the children.

2. Defendants in the written statement contended that the property was not purchased by the father in the name of Rugmini Ammal and the property was purchased by the mother Rugmini Ammal and plaintiffs are not entitled to claim any right in the property as the property belonged to the mother absolutely. It was further contended that Rugmini Ammal out of

her free will and volition executed Exts.B2 to B4 settlement deeds, whereunder the properties were given to defendants and therefore plaint schedule property is not available for partition. The learned Munsiff framed the necessary issues. On the evidence of PW1, DW1, Exts.A1 and A2 and B1 and B2 and C1, learned Munsiff held that there is no evidence to prove that the property was purchased in the name of mother Rugmini Ammal by the father as claimed by plaintiffs and the property exclusively belonged to Rugmini Ammal and therefore plaintiffs are not entitled to claim any share. The learned Munsiff also held that under Ext.B8, the mother along with plaintiffs and defendants assigned the property inherited by them from Subramanian Chettiyar and Exts.B2 to B4 were executed by Rugmini Ammal round about that period and there is no evidence to show that the Exts.B2 to B4 were vitiated on any of the grounds alleged by plaintiffs. The suit was therefore dismissed. Plaintiffs challenged the decree and judgment, before Sub Court in A.S.No.138/2002. Learned Sub-ordinate Judge on re-appreciation, of evidence confirmed the decree and judgment and dismissed the appeal. It is challenged in this second appeal by second plaintiff. The other plaintiffs/appellants in the first appeal did not challenge the

decree and judgment.

3. Learned counsel appearing for appellant and respondents 1 to 5 who filed caveat petition were heard.

4. The arguments of the learned counsel for appellants was that plaint schedule property was purchased by their father in the name of their mother in 1962 and plaintiffs were then minors and therefore there is limited scope for the evidence that could be let in and evidence on record establish that mother was not having any independent income and in such circumstances courts below should have upheld the case of plaintiffs that the property was purchased by father in the name of the mother and therefore a decree of partition should have been granted. It was also argued that Exts.B2 to B4 settlement deeds, were not proved to have been executed by the mother Rugmini Ammal out of her free will and volition and evidence establish that she was laid up and was not having sufficient mental capacity to execute settlement deeds and therefore courts below should have granted a decree for partition. Learned counsel for respondents argued that both the trial court and appellate court elaborately considered the evidence and found that the property was purchased by Rugmini Ammal out of her own funds and not by the funds of Subramanian Chettiyar in

the name of his wife and there is no reason to interfere with that finding. It was also argued that both the courts found that Rugmini Ammal along with the plaintiffs and defendants assigned the property inherited by them from Subramanian Chettiyar under Ext.B8 and its execution was not disputed and was admitted by the PW1 who alone was examined on behalf of all plaintiffs and it establishes that Rugmini Ammal had the mental capacity to execute the sale deed and therefore Exts.B2 to B4 were rightly upheld by the courts below and no substantial question of law is involved in the appeal.

5. When the property stands in the name of Rugmini Ammal and plaintiffs contended that the property was purchased by Subramanian Chettiyar in the name of his wife Rugmini Ammal benami, the burden to prove that fact is heavily on plaintiffs. Apart from contending that Subramanian Chettiyar was a Police Constable and Rugmini Ammal had no independent income, no other evidence was adduced before the court to establish that the funds for purchase of the property was that of Subramanian Chettiyar and not that of Rugmini Ammal. The contention in the plaint was that Subramanian Chettiyar purchased the property with his own funds and Rugmini Ammal had no independent income. Courts below on the evidence of

PW1 herself, who alone was examined on the side of plaintiff, at the time of purchase Subramanian Chettiyar had no funds and on the evidence it was found that Rugmini Ammal had independent income. On the evidence trial court and first appellate court rightly found that there is no evidence to prove that property was purchased by Subramanian Chettiyar in the name of Rugmini Ammal or that the funds for purchase of the property came from Subramanian Chettiyar. On the evidence courts found that Rugmini Ammal had title to the property.

6. It was argued that even if property belonged to Rugmini Ammal, on her death being her children plaintiffs are also entitled to a share. But Rugmini Ammal had executed Exts.B2 to B4 settlement deeds. If they are valid on the death of Rugmini Ammal, had no subsisting right in view of Exts.B2 to B4 settlement deed. Then the question is whether Exts.B2 to B4 are vitiated. According to plaintiff Exts.B2 to B4 are vitiated as Rugmini Ammal was laid up and was not having sound disposing mind at the time of their execution. Apart from examining PW1 no other evidence was adduced to prove the illness or want of mental capacity to execute Exts.B2 to B4. Courts below found that Exts.B2 to B4 were executed on 25.2.1997. PW1 also admitted that Rugmini Ammal and all her children including

plaintiff executed Ext. B8 and mental capacity of Rugmini Ammal to execute Ext.B8 was not in dispute. Ext. B8 sale deed was executed on 8.1.1997 whereunder Rugmini Ammal along with her children including plaintiffs assigned the property they inherited from Subramanian Chettiyar in favour of a third party. The Exts. B2 to B4 settlement were executed after one month from the date of execution of Ext. B8. If Rugmini Ammal had the mental capacity to execute Ext. B8 on 8.1.1997, as it was not disputed, as rightly found courts below she had the mental capacity to execute Exts. B1 to B4. In the absence of sufficient evidence to establish any of the contentions alleged by the plaintiffs, courts below rightly held that plaintiffs are not entitled to get a share in the plaint schedule property as Rugmini Ammal voluntarily executed Exts.B2 to B4. No substantial question of law is involved in the appeal.

The Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR, JUDGE

jp